

REMARKS

In the Office Action dated May 25, 2006, the Specification was objected to; claims 1, 3-5, 7-10, 20, 22, 24, 25, 27-30, and 33-35 were objected to; claim 25 was rejected under 35 U.S.C. § 101; claims 6, 11, 15, 18, 21, 22, 24, 25, 31, and 32 were rejected under § 103 over U.S. Patent No. 5,798,649 (Reber) in view of U.S. Patent Application Publication No. 2004/0100380 (Lindsay); and claim 14 was rejected under § 103 over Reber in view of Lindsay and U.S. Patent Application Publication No. 2002/0161545 (Starling).

Applicant acknowledges the indication of allowability of claims 1, 2-5, 7-10, 20, 27-30, 33, and 34 if objections were overcome. Applicant also acknowledges the indication of allowability of claim 35 if rewritten in independent form.

### SUMMARY OF TELEPHONIC INTERVIEW

On August 17, 2006, a telephonic interview was conducted between the undersigned and the Examiner. In the telephonic interview, the following topics were discussed: objection of the Abstract and Specification, and obviousness rejection of independent claim 6. No references or exhibits were discussed.

In the telephonic interview, Applicant proposed an amendment of claim 6 to replace “relating to one of the viability factors” on lines 7-8 of claim 6 with “a future viability-related condition” to place the claim in condition for allowance. However, the Examiner noted that claim 1 (indicated as being allowable in the present Office Action) refers to “dynamically alterable.” No agreement was reached regarding allowance of claim 6. The Examiner suggested that Applicant make any proposed amendments to the claims for consideration and further search by the Examiner.

With respect to the objection to the paragraph numbering of the Specification, Applicant noted that section headings are typically not associated with paragraph numbers in printed patent publications. The Examiner asked that Applicant include this statement in the reply to Office Action for consideration by the Examiner.

With respect to the objection to the Abstract, the Examiner asked that a new Abstract be provided with the instruction to cancel the previous Abstract.

The Examiner also mentioned the § 101 rejection of claim 25 was to be overcome. Applicant noted that Applicant would add the phrase “by a processor” into claim 25 (similar to what was done with respect to claim 1 previously) to address the § 101 rejection. No agreement was reached with respect to the § 101 rejection of claim 25.

OBJECTION TO PARAGRAPH NUMBERING

In the Office Action dated May 25, 2006, an objection was raised that section headings, such as "TITLE," "CROSS-REFERENCE TO RELATED APPLICATIONS," and so forth are not numbered with paragraph numbering.

However, as discussed in the telephonic interview of August 17, 2006, it is respectfully submitted that section headings are not required to be numbered with paragraph numbers. A review of printed publications in which paragraph numbering is included indicates that the section headings above these printed patent publications are not provided with paragraph numbers.

Therefore, withdrawal of the objection is respectfully requested.

OBJECTION TO THE ABSTRACT

The amended Abstract was objected to because the new Abstract was not presented in clean text. A substitute Abstract, with the instruction to cancel the previous Abstract, is provided in this Amendment to address the objection.

Appln. Serial No. 10/757,232  
Amendment Dated August 25, 2006  
Reply to Office Action Mailed May 25, 2006

OBJECTIONS TO THE CLAIMS

Claims 1, 7-10, 20, 22, 24, and 25 have been amended to address the objections.

REJECTION UNDER 35 U.S.C. § 101

Independent claim 25 was rejected under § 101 as being non-statutory. Claim 25 has been amended to recite that compiling the time-based history and calculating the at least one dynamically alterable critical date are performed by a processor. Therefore, it is respectfully submitted that the § 101 rejection has been overcome.

REJECTION UNDER 35 U.S.C. § 103

Independent claim 22 has been amended to incorporate the subject matter of former dependent claim 35, which was indicated by the Office Action as containing allowable subject matter. Therefore, claim 22 has been placed in condition for allowance.

As noted by the Examiner during the telephonic interview, the following phrase “dynamically alterable” appears in allowable claim 1. Applicant has amended independent claim 6 to recite that the analysis device is for generating data representative of a current condition of the product and a *dynamically alterable* predicted date relating to one of the viability factors of the product stored within the containment.

Claim 6 was rejected as being obvious over Reber and Lindsay. The Office Action conceded that Reber does not disclose the calculation of the predicted date relating to a viability factor recited in claim 6. 5/25/2006 Office Action at 5. However, the Office Action relied upon Lindsay as disclosing this subject matter. *Id.*

Applicant respectfully submits that the hypothetical combination of Reber and Lindsay does not teach or suggest all elements of claim 6. Note that Lindsay uses smart tags in which information pertaining to a freshness date, an expiration date, a date made or prepared, and so forth, are stored into smart tags associated with packaging or containers in which food products are stored. Lindsay, ¶ [0009]. The food product information stored in the smart tags include information entered into the smart tags by a supplier or manufacturer of the food product (Lindsay, ¶ [0034]) or information entered by a consumer (Lindsay, ¶ [0062]). However, the date information in Lindsay does not constitute a dynamically alterable date relating to a viability factor, as recited in claim 6. Rather, the dates specified in the smart tags of Lindsay are static dates provided by a supplier, manufacturer or consumer.

In view of the foregoing, it is respectfully submitted that the hypothetical combination of Reber and Lindsay does not teach or suggest all elements of claim 1. Therefore, claim 1 is non-obvious over Reber and Lindsay.


Independent claims 11 and 25 have been similarly amended to place them in condition for allowance.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the allowability of base claim 11 over Reber and Lindsay, it is respectfully submitted that the obviousness rejection of dependent claim 14 over Reber, Lindsay, and Starling has been overcome.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (200401797-1).

Respectfully submitted,

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